

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
Civil Action No.: 3:18-CV-00320-KDB-DSC**

LARADA SCIENCES, INC.,

Plaintiff,

vs.

PEDIATRIC HAIR SOLUTIONS
CORPORATION and FLOSONIX
VENTURES, LLC,

Defendants.

**FIRST AMENDED UTILITY PATENT
CERTIFICATE OF INITIAL
ATTORNEYS' CONFERENCE**

1. **Certification of Conference.** Pursuant to Fed. R. Civ. P. 26(f), Larada Sciences, Inc. ("Plaintiff"), Pediatric Hair Solutions Corporation and FloSonix Ventures, LLC ("Defendants") (collectively the "Parties") through their respective counsel conducted a telephonic meet-and-confer on August 28, 2018 to discuss Claim Construction Scheduling Order Deadlines. The Parties also conducted a telephonic meet-and-confer on January 20, 2020 to discuss Post-Claim Construction Order Deadlines, settlement, and Plaintiff's position on Defendants' stay request.

2. **Pre-Discovery Disclosures.** The information required by Fed.R.Civ.P. 26(a)(1) has been exchanged.

3. **Claim Construction Scheduling Order Deadlines.** On September 5, 2018, the Court entered the Claim Construction Scheduling Order (Dkt. 18) (hereinafter “SO”) with the following dates:

	<u>Standard</u>
Serve Initial Infringement Contentions	October 5, 2018
Serve Initial Invalidity Contentions	December 4, 2018
Exchange of Terms for Construction	December 26, 2018
Exchange Preliminary Claim Construction	January 15, 2019
File Joint Claim Construction Statement	February 14, 2019
Close of Claim Construction Statement	March 18, 2019
File Opening Claim Construction Brief	April 1, 2019
File Responsive Claim Construction Brief	April 15, 2019
File Reply Claim Construction Brief	April 22, 2019
File Surreply Claim Construction Brief	April 29, 2019
File Claim Construction Chart	May 6, 2019
Claim Construction Hearing	May 13, 2019

4. **Discovery Plan.** All Discovery shall commence upon entry of the SO and end at the time provided in the Pretrial Order and Case Management Plan, hereinafter the Pretrial Order or “PO.”

- a. Defendants may collectively propound a total of 30 interrogatories to Plaintiff. Plaintiff may propound 10 interrogatories on each Defendant, and may propound a total of 10 common interrogatories that must be answered by both Defendants.
- b. Maximum of 50 requests for admission by each party to any other party, except that there shall be no limits for requests for admission relating to authenticity of documents.
- c. Maximum of 10 depositions by plaintiff and 10 by defendant(s), not including experts.

5. **Post-Claim Construction Order Deadlines.** Subject to Defendants’ upcoming motion to stay (*see* paragraph 6(a) below), the parties jointly propose to the Court the deadlines listed below for inclusion in the Utility Patent Pretrial Order and Case Management Plan (hereinafter the Pretrial Order or “PO”). These deadlines are based on the parties’ agreed to

baseline date of February 12, 2020 and the standard time frames outlined in the sample Utility Patent Pretrial Order available on the Court's website:

Amended Infringement Contentions	March 13, 2020
Amended Invalidity Contentions Served	April 13, 2020
Advice of Counsel Defense	June 11, 2020
Fact Discovery Deadline	August 10, 2020
Opening Expert Reports	September 24, 2020
Rebuttal Expert Reports	October 26, 2020
Close of Expert Discovery	November 9, 2020
Mediation Deadline	November 23, 2020
Dispositive and Daubert Motions	December 28, 2020
Ready Date for Trial	April 7, 2021

6. **Other Items.**

- a. Motion to Stay: On January 14, 2020, the Patent Trial and Appeal Board (PTAB) of the United States Patent and Trademark Office (USPTO) instituted *Inter Partes* Review (IPR) of U.S. Patents No. 8,475,510 (IPR2019-01231), 7,789,902 (IPR2019-01229), and 8,162,999 (IPR2019-01230), the three utility patents at-issue in the current litigation, to determine the validity of those patents' claims. Defendants intend to file a motion to stay and have asked Plaintiff its position. Due to Plaintiff's recent change in counsel, Plaintiff has been unable to provide a position, but has indicated it will do so by February 6, 2020. Defendant intends to file its motion within a week of that date.
- b. Settlement Discussions: The parties have engaged in settlement discussions throughout the case. The parties engaged in mediation on October 16, 2019. All

parties and their counsel were in attendance. The mediation reached an impasse and Plaintiff's previous counsel filed a Report of Outcome of Mediation notice on October 16, 2019 (Dkt. 36). The parties have not had meaningful settlement discussion since, but expect to continue settlement discussions once Plaintiff's new counsel familiarizes itself with the case.

- c. Final lists of witnesses and exhibits under Rule 26(a)(3) are due from parties that bear the burden of proof no later than 73 days before the date set for trial by the Court; and are due from parties that do not bear the burden of proof no later than 66 days before the date set for trial by the Court.
- d. If the case is ultimately tried, trial is with a jury, and is expected to take approximately five days.

7. The parties have considered and discussed the issues as provided in Local Patent Rule 2.1(A)(1)-(9) and other issues regarding discovery or case management, and have identified the following issues that may require the Court's attention:

- a. The parties agreed that indefiniteness should be determined as part of the claim construction proceedings. Any terms Defendants contend are indefinite under 35 U.S.C. § 112 must be identified in the Exchange of Proposed Terms for Construction pursuant to P.R. 4.1. Arguments regarding indefiniteness under 35 U.S.C. § 112 must be included with the parties' claim construction brief.
- b. In view of the suit between Plaintiff and Defendant Pediatric Hair Solutions currently pending in the United States District Court for the

District of Utah (Case No. 2:18-cv-005510-BCW), the parties agree that it would be most efficient to combine document productions between these two cases. Accordingly, documents produced in response to requests for production made in either case will be sequentially Bates-labeled and made available for use by the requesting party in both cases. The production of documents in one case shall not constitute waiver of objections raised in the other.

- c. Motions in limine must be filed no later than 45 days before the date set for trial by the Court.
- d. The Parties agree that privileged communication on or after the filing date of this lawsuit do not need to be logged.
- e. The Parties agree that it will be necessary to produce confidential documents in this case and to file them under seal, and thus a Protective Order will be required. The Parties will endeavor to reach agreement on this issue, and file a Proposed Protective Order.
- f. The Parties believe that live testimony at the Claim Construction Hearing may be unnecessary, but both reserve the right at this time to present such testimony. The Parties further agree that if any Party relies on the testimony of an expert in that Party's Local Patent Rule 4.2 disclosures, the other Party shall have 30 days to identify its own expert testimony.
- g. The Parties believe that the Claim Construction Hearing should be presented on a term-by-term basis.

- h. If the Parties believe a Claim Construction Prehearing for purposes of technology tutorial would be necessary, they will so notify the Court as soon as practical.

DATED this 30th day of January, 2020.

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CERTIFICATE OF SERVICE

I certify that on the 30th day of January, 2020, I caused to be electronically transmitted the foregoing Amended Certificate of Attorneys' Conference to the Clerk of the Court using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to the following participants who are registered CM/ECF users, and will be served by the CM/ECF system per Civil Local Rule 5-1.

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